TO: ASSESSING OFFICERS

FROM: STATE TAX COMMISSION

NO. 5, April 12, 1988
1% and 4% ADMINISTRATION FEE
DNR LANDS

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

DEPARTMENT OF NATURAL RESOURCES: Duty to pay administration fee on state lands

TAXATION: Collection or payment of administration fee upon state-owned lands under jursidiction of Department of Natural Resources

The Legislature has not authorized the collection or the payment of the 1% administration fee on state-owned lands under the jurisdiction of the Department of Natural Resources

Opinion No. 6500

FEB 25 1988

Honorable Gary L. Randall
State Representative
State Capitol
Lansing, MI 48909

Under the provisions of 1925 PA 91, § 3, MCL 211.493; MSA 7.713, the Department of Natural Resources is required to make certain payments to tax collecting officers in connection with state-owned lands. These include: (a) payments in lieu of taxes upon certain state-owned lands under the jurisdiction of the Department of Natural Resources; and (b) any interest and penalty chargeable against such payments.

You have requested an opinion as to whether, in addition to these payments, the Department of Natural Resources is required to pay to such collecting authorities an amount

equivalent to the 1% tax administration fee which is or may be collected from private parties paying ad valorem real property taxes levied under the "General Property Tax Act," 1893 PA 206, MCL 211.1 et seq; MSA 7.1 et seq.

All public property belonging to the state (with certain exceptions not here relevant) is exempt from ad valorem property taxation pursuant to the General Property Tax Act, § 7l; MCL 211.7l; MSA 7.7(4i). In 1925 PA 91, MCL 211.491, et seq; MSA 7.711, et seq, however, the Legislature has made provision for payments in lieu of taxes to local units of government on certain lands owned by the State of Michigan and controlled by the Department of Natural Resources. The lands subject to payments in lieu of taxes include all lands to which title was acquired by purchase on or after January 1, 1933 and the Mason game farm. MCL 211.491; MSA 7.711.[1]

The valuation of such lands is annually fixed by the State Tax Commission. The State Tax Commission furnishes its determination of value to the local assessing officer. That

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[1]The Department of Natural Resources, in accordance with 1917 PA 116, MCL 211.581; MSA 7.871, also makes payments in lieu of taxes to counties, townships, and school districts on tax reverted, recreation or forest lands (except lands purchased after January 1, 1933 for recreational purposes) under the Department's control. In the most recent past, payments have been made at the rate of $1.50 per acre, the payments being prorated as follows: 40% to the county general fund, 40% to the township general fund, and 20% to the school operating fund. By means of 1986 PA 248, these payments have been increased to $2.50 per acre.

value shall be fixed at the same percentage of true cash value as other property is assessed in the assessment district. In establishing that value, the State Tax Commission shall not include the value associated with improvements made to or placed upon the lands. MCL 211.492; MSA 7.712. The local assessing officer enters the lands subject to assessment upon the assessment rolls at the value established by the State Tax Commission and, after applying the relevant equalization factor, assesses such lands at the same rate as other real property in the district is assessed. MCL 211.492; MSA 7.712. The local treasurer or other local person charged with collection of taxes then forwards the statement of the assessment to the Department of Natural Resources. MCL 211.493; MSA 7.713.

The Department of Natural Resources reviews that statement and if it concludes that the assessment has been properly determined, authorizes the State Treasurer to pay the amount of assessment.[2] In the 1984-85 fiscal year, the Department of Natural Resources paid to local units of government $9,441,271.03 under 1925 PA 91, and in fiscal year 1985-86 paid $8,589,108.21.[3]

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[2]These payments are made from monies appropriated by the Legislature for such purposes from the general fund, the game and fish protection fund, and the Michigan land trust fund.

[3]The Department of Natural Resources also made payments in lieu of taxes to local units of government under 1917 PA 116, supra, in the amount of $5,275,541.00 in fiscal year 1984-85, and $5,281,148.29 in fiscal year 1985-86.

Payments have in recent years been delayed, however, either as a result of insufficient staffing or lack of sufficient appropriations. In response to the concern over delay in satisfaction of the obligation to make payments in lieu of taxes to local units, the Legislature enacted 1986 PA 158 to amend the title to 1925 PA 91, supra, and to amend § 3(2) thereof.

The bill analysis made in conjunction with the amendatory bill (HB 4264) recites in part:

> "THE APPARENT PROBLEM:
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> "Wherever the blame for late payments may lie, some local officials believe that the state should be subject to the same penalties applied to individuals who are delinquent in paying their property taxes.
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> "THE CONTENT OF THE BILL:
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> "The bill would amend Public Act 21 of 1925 to require the state to pay interest and penalties for late payments in lieu of taxes in the same manner that local governments collect them on delinquent property taxes under the Property Tax Act. However, the interest and penalties would not be applied where local units collect summer taxes for the first time (MCL 211.493)." House Legislative Analysis, HB 4264, May 15, 1986.

The title to 1925 PA 91 was, accordingly, amended by insertion of the clause "and to provide for the payment of interest and penalties on these payments." Section 3(2), as amended by 1986 PA 158, provides:

> "(2) If the amount of the assessment is not paid within the time provided for the

> payment of property taxes pursuant to the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.1 to 211.157 of the Michigan Compiled Laws, interest and penalties may be imposed by the local property tax collecting unit in the same manner provided for delinquent property taxes in Act No. 206 of the Public Acts of 1893. However, interest and penalties shall not be imposed for a tax that is collected in the summer for the first time by a local property tax collecting unit." MCL 211.493; MSA 7.713.

This amendment to the title and body of 1925 PA 91, supra, authorizes and directs payment of penalties and interest. The bill analysis likewise underscores an intent to additionally authorize payment of only penalties and interest. The Act does not authorize or direct payment of administration fees. Neither is it permissible to imply such authority or direction. Expressio unius est exclusio alterius. Sebewaing Industries, Inc v Village of Sebewaing, 337 Mich 530; 60 NW2d 444 (1953), Revard v Johns-Manville Sales Corp, 111 Mich App 91; 314 NW2d 533 (1981), See also Ficano v Lucas, 133 Mich App 268; 351 NW2d 198 (1983).

The property tax administration fee constitutes neither "interest" nor "penalty." This fee is defined by the General Property Tax Act, as "a fee to offset costs incurred by a collecting unit in assessing property values, collecting the property tax levies, and in the review and appeal processes." MCL 211.44(3); MSA 7.87(3).

Where authorized, the fee is collected from taxpayers who are making timely payment of taxes; i.e., are not delinquent. The imposition and collection of the fee in no way promotes the timely payment of tax obligations. The fee simply allows local assessing units to defray the costs of assessment, levy, and collection of taxes and the appeal or review thereof.

MCL 211.44(4); MSA 7.87(4) provides in part that "[a] property tax administration fee collected by the township treasurer shall be used only for the purposes for which it is collected as specified in subsection (3) and this subsection." It also permits use of the administration fee proceeds to pay the cost of the surety bond furnished by a surety company for the township treasurer.

In contrast to this is the late penalty charge authorized by MCL 211.44(3); MSA 7.87(3):

> "[O]n all taxes paid after February 14 and before March 1 the governing body of a city or township may authorize the treasurer to add to the tax a property tax administration fee to the extent imposed on taxes paid before February 15 and a late penalty charge equal to 3% of such tax." (Emphasis added.)

The "late penalty charge" is undeniably a "penalty." This exaction must be paid by the Department of Natural Resources when payments are made to a city or township after

the due date February 14, but before March 1, provided the governing body of the city or township shall, by resolution or ordinance adopted after December 31, 1982, have authorized imposition of such late penalty charge. If payment of taxes is not made to the local collecting officer before March 1, payment is made to the county treasurer.

Section 59(1) of the General Property Tax Act, MCL 211.59(1); MSA 7.103(1), provides that the county treasurer may accept the payment of the delinquent taxes "with interest computed ... at the rate of 1% per month or fraction of a month, ... with 4% of the delinquent taxes as a county property tax administration fee, ..." (Emphasis added.) Again, this fee is neither interest nor a penalty. It is collected by the county for use in "defraying" costs incurred in and ancillary to collecting delinquent property taxes. MCL 211.59; MSA 7.103. While its imposition arguably may assist in assuring prompt and timely payment of taxes by those wishing to avoid the 4% added costs, as opposed to a local administration fee which is collectible from both non-delinquent as well as delinquent tax payers, it remains a fee and not a penalty.

Case authority and the opinions of the Attorney General further compel the conclusion that the fees, as opposed to interest and penalty, cannot be paid by the state

or collected by local units of government in the absence of express legislative authorization.

In 1927, the Attorney General concluded that the state was not authorized to pay collection fees under 1925 PA 91 as it then read. OAG, 1926-1928, p 292 (March 30, 1927). The Attorney General reasoned:

> "State lands are not taxable without the consent of the state. The state cannot be held to have consented to anything beyond that directly expressed in the statute giving such consent, or necessarily implied from the consent given.
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> "Act No. 91 of the Public Acts of 1925 consents to the payment of a tax as provided therein. It does not consent to the payment of fees to the local tax collecting officers, and therefore such fees to such officers are not chargeable to or collectible from the state." OAG 1926-1928, p 292.

OAG 1967-1968, No 4615, p 154 (November 27, 1967), concluded that absent legislative authorization, the State of Michigan was not obligated to pay interest or collection fees on delinquent taxes on property acquired by the state prior to levy of taxes on the property. In addressing the question of whether the authority to pay such exactions may be implied, the Attorney General stated:

> "Tax statutes are to be strictly construed and when the State is involved, a presumption arises that the State shall be excluded from taxation unless specific provision is made to the contrary.

"....

"In reference to interest, the general rule of law is to the effect that the State is not liable for the payment of interest in the absence of agreement or statutory authorization.

"....

"Had it been the intention of the legislature to make tax collectors responsible for the collection of fees and interest from state agencies, it is reasonable to assume that the legislature by express provision would have made it the duty of the State to pay. Having failed to so provide, such a directive cannot be implied against the State of Michigan for the reasons set forth above.

"....

"'Tax exactions, property or excise, must rest upon legislative enactment, and collecting officers can only act within express authority conferred by law. Tax collectors must be able to point to such express authority so that it may be read when it is questioned in court. The scope of tax laws may not be extended by implication or forced construction. Such laws may be made plain, and the language thereof, if dubious, is not resolved against the taxpayer....' (Emphasis supplied)" OAG 1967-1968, No 4615, supra, at 156-157. [Quoting with approval In re Dodge Bros, 241 Mich 665, 669; 217 NW 777 (1928)].

It must similarly be concluded that the Department of Natural Resources cannot pay, nor may the local or county treasurers collect, any tax administration fees in connection with the payment by the Department of Natural Resources of payments in lieu of taxes. The Legislature has authorized

and directed payment of penalties and interest only, not administration fees. Authority to pay fees may not be implied. The fees are not collected to assure prompt payment of obligations, the problem addressed by the amendatory provisions of 1986 PA 158. Where a local unit authorizes collection of such fees, they are to be paid by the non-delinquent as well as the delinquent taxpayers.

It is my opinion, therefore, that the Legislature has not authorized collection or payment of the 1% administration fee on state-owned lands under the jurisdiction of the Department of Natural Resources.

FRANK J. KELLEY
Attorney General